

**Juniper Ridge Landfill  
Department Order #S-020700-WD-W-M**

**Draft Board Findings of Fact and Order  
(Dismissal)**

**on Petition to Modify and Request for Public Hearing  
jointly filed by PERC and MRC**

## IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH THE	)	PETITION TO REVOKE,
STATE PLANNING OFFICE	)	MODIFY OR SUSPEND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE LICENSE
JUNIPER RIDGE LANDFILL	)	
CHANGE IN MSW BYPASS LIMIT	)	
#S-020700-WD-W-M	)	DISMISSAL

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §341-D(3) and the Department's 06-096 CMR 2 §27 *Rules Concerning the Processing of Applications and Other Administrative Matters* (last amended April 1, 2003), the Board of Environmental Protection has considered the Petition to Modify filed by Penobscot Energy Recovery Company, LLC and the Municipal Review Committee, Inc. ("petitioners"), the joint response of the permit holder (the State of Maine, acting through the State Planning Office) and the Juniper Ridge Landfill operator (NEWSME Landfill Operations, LLC), and other related materials on file and FINDS THE FOLLOWING FACTS:

1. LISTING OF ACRONYMS, TERMS AND ABBREVIATIONS USED IN THIS DOCUMENT

amendment license	DEP license #S-020700-WD-N-A, affirmed by the Board on October 21, 2004
Board	Maine Board of Environmental Protection
Casella	Casella Waste Systems, Inc.
DEP or Department	Maine Department of Environmental Protection
FEPR	front-end processing residue
JRL	Juniper Ridge Landfill, located in Old Town, Maine
Maine Energy	Maine Energy Recovery Company incinerator, located in Biddeford, Maine
minor revision license	DEP license #S-020700-WD-W-M, as modified by the Board on March 3, 2011
MRC	Municipal Review Committee, Inc.
MSW	municipal solid waste
NEWSME	NEWSME Landfill Operations, LLC, a subsidiary of Casella and operator of JRL
PERC	Penobscot Energy Recovery Company, LP incinerator, located in Orrington, Maine
permittee	jointly, SPO and NEWSME (as contracted operator of JRL)
petitioners	jointly, PERC and MRC
soft layer	also called protective system, select layer, select waste
SPO	Maine State Planning Office

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JUNIPER RIDGE LANDFILL	)	
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## 2. HISTORY

Background information on Juniper Ridge Landfill ("JRL") and the acceptance of unprocessed municipal solid waste ("MSW") at JRL was provided in the Board Order dismissing the petitioners' appeal of the Department Order that is the subject of this petition; see Attachment A, documentation of mailing dated March 4, 2011 and the *Board Findings of Fact and Order (Denial)*, dated March 3, 2011, of the appeal by PERC and MRC of Department Order #S-020700-WD-W-M.

On September 10, 2010, the Department issued Order #S-020700-WD-W-M ("the minor revision license") which approved, with conditions, the request by the State Planning Office ("SPO") to modify Department Order #S-020700-WD-N-A ("the amendment license"), which, in part, placed an annual total limit of 310,000 tons on the amount of unprocessed MSW accepted by the Maine Energy Recovery Company ("Maine Energy") incinerator in Biddeford, Maine plus the unprocessed MSW bypassed by Maine Energy to Pine Tree Landfill in Hampden, Maine and JRL in Old Town, Maine. The minor revision license approved the acceptance of unprocessed MSW bypassed from Maine Energy outside the 310,000 tons annual limit when the additional MSW bypass is specifically used in the protective "soft layer" required by 06-096 CMR 401.2.D(4)(a)(vii).

On October 13, 2010, PERC and MRC submitted a timely appeal of the Commissioner's license approval, requesting that the Board modify the minor revision license as follows: remove all references to the suitability of other waste streams used as soft layer material; remove all references to the use of MSW as a soft layer for future cells at JRL and Maine Energy as the sole supplier of the MSW; limit the minor revision license approval to the 31,440 cubic yards of MSW bypass calculated to be needed for the Cell 6 soft layer; and require that MSW bypass used in the soft layer for Cell 6 and all future cells be included in the 310,000 tons annual limit placed on Maine Energy, Pine Tree and JRL by the amendment license. PERC and MRC also requested that the Board remand the minor revision license to the Department for a full technical review and analysis through the licensing amendment process, including appropriate materials for use in the soft layer and how MSW could be placed in new cells in conjunction with other waste streams to minimize its use pursuant to the statutory solid waste hierarchy. PERC and MRC further requested that the Board hold a public hearing on the appeal.

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CHANGE IN MSW BYPASS LIMIT	)	
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On February 28, 2011, PERC and MRC filed a request with the Board to stay the minor revision license and supplement the record with 2 affidavits: one from Michael Mains, dated February 17, 2011 and the other from Denis St. Peter, P.E., dated February 21, 2011. On March 2, 2011, the Board Chair denied the request to stay the minor revision license and the request to supplement the record for the appeal with the 2 affidavits.

On March 3, 2011, the Board heard the appeal of the minor revision license. The Board unanimously voted to deny the appeal of the minor revision license and the request for a public hearing on the appeal. The Board also unanimously voted to modify Finding of Fact #3 of the minor revision license to clarify that MSW for the soft layer in new cells may come from any of the 4 Maine incinerators.

### 3. BASIS FOR PETITION and REQUEST FOR A PUBLIC HEARING

On May 27, 2011, PERC and MRC filed a petition seeking specific modifications to the minor revision license issued to SPO. The petitioners allege the following criteria of 06-096 CMR 2 §27 have been violated.

- A. Violation of license conditions (06-096 CMR 2 §27.A): The petitioners allege the licensee has violated conditions #16.A, #16.B and #16.D of the amendment license<sup>1</sup> by allowing the disposal of unprocessed MSW at JRL that is not bypass from one of the 4 Maine incinerators, by accepting waste from an incinerator without appropriate verifiable authorization, and by failing to notify the Department that waste deliveries in excess of processing capacity at MSW incinerators were received from Maine Energy for a continuous period exceeding 1 week. Exhibit 3 of the petition is an affidavit from Michael Mains of Eden Environmental, Inc. dated February 17, 2011<sup>2</sup>. The Mains affidavit describes a review of records and data submitted to the Department and to SPO documenting deliveries of MSW to Maine Energy, PERC and JRL, and provides Mains' opinion on the permittee's compliance with conditions #16.A, #16.B and #16.D of the amendment license<sup>3</sup>. The petitioners assert that Mains' evaluation shows that MSW shipped directly from specific transfer

<sup>1</sup> See Finding of Fact #2 of the minor revision license, Attachment B of this Order, for the wording of Condition #16 in the amendment license.

<sup>2</sup> This is one of the 2 affidavits the Board ruled on March 2, 2011 could not be used to supplement the appeal of the minor revision license by the same parties.

<sup>3</sup> The amendment license is provided as Exhibit 2 of the petition.

STATE OF MAINE, ACTING THROUGH THE	4	PETITION TO REVOKE,
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JUNIPER RIDGE LANDFILL	)	
CHANGE IN MSW BYPASS LIMIT	)	
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stations to JRL rather than first going to Maine Energy was not considered bypass by Maine Energy in its annual reports submitted to the Department and SPO, and categorizes this as "unallocated" MSW that made up approximately 85% of MSW delivered to JRL for disposal rather than going to a Maine incinerator (primarily Maine Energy) for processing and disposal in 2008 and 2009. The Mains affidavit provided by the petitioners also concluded that MSW deliveries to JRL are regular and continuous, but are planned to last just short of the 7 day reporting requirement of Condition #16.D of the amendment license. Mains' review of the monthly waste summaries provided to the Department showed that between 2008 and 2010 Casella delivered MSW from its transfer stations to JRL 4 or more days per week 91 weeks of the possible 156 weeks in the time period. The Mains affidavit concludes that the frequency of the MSW deliveries to JRL indicates the deliveries are not bypass, but are instead automatic, ongoing shipments of MSW to JRL that the 310,000 ton annual limit was intended, in part, to prohibit. The Mains affidavit noted 4 MSW delivery periods to JRL between 2008 and 2010 from Casella transfer stations or Maine Energy that lasted 7 days or more and thus should have triggered bypass letters being sent to the Department in accordance with Condition #16.D of the amendment license.

- B. Misrepresentation or failure to disclose all relevant facts (06-096 CMR 2 §27.B): The petitioners allege the licensee obtained the license by misrepresenting or failing to disclose fully all relevant facts in that SPO did not disclose to the Department that unprocessed MSW bypass was sent to JRL on a regular and continuous basis, even in the summer months when there is no planned shutdown, and in that SPO did not disclose to the Department that a significant portion of the MSW already sent to JRL was done so without verifiable authorization and that there were 4 periods of continuous MSW deliveries between 2008 and 2010 that lasted for 7 days or more without written notice being sent to the Department.
- C. Pose a threat to human health or the environment (06-096 CMR 2 §27.C): The petitioners allege the licensed activity poses a threat to human health or the environment in that the minor revision license allows the unproven use of unprocessed MSW as the sole material for the soft layer at JRL. The petitioners allege unprocessed MSW has the potential to cause the puncture or other damage to the landfill liner or leachate collection system the soft layer is intended to protect, which poses a threat to human health

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JUNIPER RIDGE LANDFILL	)	
CHANGE IN MSW BYPASS LIMIT	)	
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or the environment. Exhibit 4 of the petition is an affidavit from Denis St. Peter, president of CES, Inc. dated February 21, 2011<sup>4</sup>. The St. Peter affidavit addresses the use of MSW in the soft layers of landfills in Maine, and expresses concern with the placement of only MSW as the soft layer at JRL; the affidavit describes the use of MSW in the soft layer in landfill cells designed by CES, Inc. only in combination with other wastes. St. Peter's affidavit states the minor revision license does not contain sufficient technical support to find MSW is the most appropriate material for use in the soft layer, and suggests the Department perform technical analyses of the possible wastes to rule out particular waste materials from use in soft layers. Attached to the affidavit is a report entitled "*Clogging Investigation Report Sump Area, Phase I Landfill Expansion Leachate Collection System, ecomaine Landfill, South Portland and Scarborough, Maine*" prepared by Sevee & Maher Engineers, Inc. and dated September 2010. St. Peter states the report concludes that clogging issues found at the ecomaine landfill were found after field observations and testing to be primarily caused by clogging of the geotextile used in the leachate collection system. St. Peter also refers to a USEPA project summary that provides information on filters used in leachate collection systems. St. Peter's affidavit concludes that available technical evidence conflicts with the Department's conclusion that FEPR is unsuitable for use in the soft layer.

- D. Change in condition or circumstance (06-096 CMR 2 §27.F): The petitioners allege there has been a change in condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license in that, during the Board's March 3, 2011 consideration of the petitioners' appeal of the minor revision license, Department staff stated that the focus of the minor revision license was SPO's request for an increase in the 310,000 ton annual limit on MSW accepted, in total, at Maine Energy and JRL and not an evaluation of the merits of using MSW as a soft layer in a landfill since the Department does not approve soft layer materials in such a way. The petitioners allege the Department's concern with the use of FEPR in the soft layer is likely isolated to relatively small landfill sump collection

<sup>4</sup> This is second of the 2 affidavits the Board ruled on March 2, 2011 could not be used to supplement the appeal of the minor revision license by the same parties.

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JUNIPER RIDGE LANDFILL	)	
CHANGE IN MSW BYPASS LIMIT	)	
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areas and are due to the clogging of geotextiles rather than the characteristics of FEPR.

The petitioners also request that the Board hold a hearing on the petition; the petitioners state there is credible conflicting evidence regarding “this matter” and the Board would benefit from a hearing.

#### 4. APPLICABLE REVIEW STANDARD

Pursuant to 38 M.R.S.A. § 341-D(3), after written notice and an opportunity for a hearing pursuant to 5 M.R.S.A. §§ 9051 through 9064 *Administrative Procedure Act*, the Board may act in accordance with the *Administrative Procedure Act* to modify, revoke or suspend a license, whenever the Board finds that certain conditions exist. Such conditions include the 4 criteria listed in Finding of Fact #3, above, that the petitioners allege have been violated.

Section 27 of the Department’s *Rules Concerning the Processing of Applications and Other Administrative Matters* provides that when a petition to modify, revoke or suspend a license has been filed, after notice of opportunity for the petitioner and licensee to be heard, the Board shall either dismiss the petition or schedule a hearing on the petition.

Pursuant to 38 M.R.S.A. §341-D and 06-096 CMR 2 §27, the Board has the discretion to either dismiss the petition or proceed to hearing. Factors to consider in exercising that discretion include whether the petition describes sufficient factual basis which, if proven at hearing, would support the requested action.

#### 5. PERMITTEE’S RESPONSE TO PETITION

In addition to responding to the 4 criteria of 06-096 CMR 2 §27 alleged by the petitioners to have been violated by the permittee (see Finding of Fact #3, above), the permittee argues that the legal doctrine *res judicata*<sup>5</sup> applies to this petition, and thus the petition should be dismissed, since the petitioners are asserting the

<sup>5</sup> The doctrine of *res judicata* is explained in footnote 8, located on page 11, of the “Joint Response of the State Planning Office and NEWSME Landfill Operations, LLC to Petition to Modify Filed by the Municipal Review Committee, Inc. and Penobscot Energy Recovery Company, LP” dated July 8, 2011. In summary, it is a court-made collection of rules designed to ensure that the same matter will not be litigated more than once. Courts in certain instances have found that the rules of *res judicata* may be applied to agencies with respect to their own adjudications.

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same claims that were already dismissed by the Board on March 3, 2011 when the Board heard the petitioners' appeal of the minor revision license.

The permittee contends there is no need for the Board to hold the hearing requested by the petitioners for the following reasons: the petitioners offer no new evidence; the evidence they again seek to offer was previously rejected by the Board because, in part, it was untimely; and the petitioners opted not to appeal to Superior Court the Board's March 3, 2011 decision on their appeal of the same minor revision license. The permittee notes that there is no credible conflicting technical information regarding a license criterion, and that it is not likely a public hearing would assist the Board in understanding this matter.

The permittee provided detailed responses to each of the alleged violations of the criteria of 06-096 CMR 2 §27 made by the petitioners, as summarized below:

- A. Violation of license conditions (06-096 CMR 2 §27.A): The permittee states JRL is operated in compliance with Condition #16 of the amendment license. After an in-depth background description of how unprocessed MSW is managed by Casella within Maine, the permittee asserts the petitioners do not understand that emptying the tipping floor at Maine Energy at the end of each week reduces the facility's operational flexibility. Ensuring sufficient supplies of waste to maximize power output while zeroing the tipping floor weekly may require more frequent bypasses of MSW. PERC, on the other hand, stores MSW on its tipping floor until it is processed into refuse-derived fuel. The permittee also states Casella does provide verifiable authorization of bypass events through its internal tracking system, and notes that the language in Condition #16.B of the amendment license is not a reporting requirement, and the existence of the notices from Maine Energy to JRL is easily verifiable and known to Department staff. The permittee states that the petitioners are misinterpreting Condition #16.D of the amendment license as requiring the permittee to send a formal letter to the Department when a bypass exceeds a week; the permittee notes the language in the license does not require written notice and that notice, when required, is commonly provided through a telephone call or in person when a bypass goes into a seventh consecutive day (a day earlier than the condition requires). Finally, the permittee notes that Condition #16.D requires notice of bypass events lasting longer than 7 days; although the Mains affidavit in the petition alleges 4 unspecified bypass events exceeded this



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CHANGE IN MSW BYPASS LIMIT	)	
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time frame, the permittee's search of its records identified only 1 bypass event (in May 2008) that lasted 8 days or longer. Notice of this single event was likely provided to Department staff during a routine conversation about JRL operations.

- B. Misrepresentation or failure to disclose all relevant facts (06-096 CMR 2 §27.B): The permittee states the Department issued the minor revision license with a full understanding of the facts. The permittee asserts that the petitioners' claim that the permittee did not disclose to the Department that MSW was sent to JRL on a regular and continuous basis, even in the summer months, has no basis, since the date, weight and source of each truckload of MSW bypass delivered to JRL is reported to the Department on a monthly basis.
- C. Pose a threat to human health or the environment (06-096 CMR 2 §27.C): The permittee states that the use of MSW bypass in the soft layer at JRL does not pose a threat to human health or the environment, and notes that the Board previously rejected the same argument in the Board Findings of Fact and Order (Denial) issued after it heard the petitioners' appeal of the minor revision license at its regular meeting held on March 3, 2011. In addition to the findings made in the Board Finding of Facts and Order (Denial) dated March 3, 2011<sup>6</sup>, the permittee presented, in Attachment E of its July 8, 2011 response to this petition, a copy of a Department memorandum written by Amanda Wade, P.E. to Cynthia Darling, project manager, dated November 8, 2010, that provided background information used by the Department's Technical Services Engineering Unit in its evaluation of materials proposed to be used as part of a landfill liner protective system. The memorandum explains the benefits and possible problems with different wastes that have been proposed for use as the soft layer. The memorandum specifically addresses significant blinding and clogging problems Department staff have seen when FEPR and ash were used in the soft layer. In summary, the memorandum notes that the select waste most commonly used in Maine commercial and municipal landfills is MSW; that Department staff's experience shows that MSW has the

<sup>6</sup> See Finding of Fact #8 of the *Board Findings of Fact and Order (Denial)*, dated March 3, 2011, of the appeal by PERC and MRC of Department Order #S-020700-WD-W-M in Attachment A of this Order.

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JUNIPER RIDGE LANDFILL	)	
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appropriate characteristics for use in the soft layer; and that Department staff recommend the use of MSW in the soft layer.

- D. Change in condition or circumstance (06-096 CMR 2 §27.F): The permittee states that there has been no change in condition or circumstance requiring modification of the minor revision license. Firstly, the permittee contends the petitioners abandoned any further right to challenge the Department's basis for the minor revision license when they chose not to appeal the March 3, 2011 Board Findings of Fact and Order (Denial) to Superior Court, and argues that the petitioners' attempt to retry the same argument used in appeal about the use of FEPR in the soft layer and submission of the exact affidavit from Denis St. Peter that was disallowed on March 2, 2011 underscores that there has been no change in condition or circumstance. The permittee rebuts the conclusion in the St. Peter affidavit that the geotextiles component of the leachate collection system at ecomaine caused clogging by quoting the executive summary of the report<sup>7</sup> which states the principal cause of the clogging was determined to be the soil component of the tire chip layer placed as part of the soft layer in the sump area. The permittee further contends that the petitioners selectively quote and mischaracterize a statement made by Department staff when the appeal of the minor revision license by MRC and PERC was heard at the March 3, 2011 Board meeting; rather than changing the Department's position on the use of MSW in the soft layer (as put forth by the petitioners), the permittee argues Department staff was informing the Board that the Department usually approves the specific waste(s) to be used in the soft layer at a landfill through consultation with the landfill owner/operator rather than through a minor revision licensing process. In this instance, it was approved within the minor revision license because the 310,000 ton annual limit for unprocessed MSW bypass handled at Maine Energy and JRL was modified through the licensing process, and the Department staff recommendation for use of MSW in the soft layer was critical to understanding the Department's decision to modify the 310,000 ton annual limit.

<sup>7</sup> the referenced ecomaine report is Attachment A in the St. Peter affidavit, which is Exhibit 4 of the petition.

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CHANGE IN MSW BYPASS LIMIT	)	
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## 7. DISCUSSION AND BOARD FINDINGS

- A. Res Judicata: As evidence in support of its petition to modify the minor revision license, the petitioners present the same 2 affidavits with which it sought to supplement the record just prior to the scheduled March 3, 2011 consideration of its appeal of the same minor revision license. The permittee states the doctrine of *res judicata* applies because the petitioners are asserting the same claims that were already dismissed by the Board on March 3, 2011 when the Board heard the petitioners' appeal of the minor revision license. Department staff confirm that the 2 affidavits provided as Exhibit 3 and Exhibit 4 of the petition are the same affidavits submitted on February 28, 2011 with a request to supplement the petitioners' (then the appellant's) appeal; this request to supplement the record was denied on March 2, 2011.

While a permittee is entitled to rely upon a Board decision denying an appeal of a licensing decision, especially, as is the case here, when the allegedly aggrieved party chooses not to file an appeal of the Board decision to Superior Court, a petition to revoke or modify a license pursuant to 38 M.R.S. § 341-D(3) and 06-096 CMR 2 §27 may be filed at any time. Also, while there is considerable overlap between the appeal of the license amendment previously filed by the same party and the petition at hand, not all the issues are completely identical. Therefore, the Board will not dismiss the petition outright on *res judicata* grounds, but will consider the merits of the petition. Nonetheless, the Board notes that a petition to amend a license is not intended to be an avenue for Board review of information that could have been brought to the Board's attention on an appeal of a license. To the extent that the arguments raised here were discussed at the Board meeting on March 3, 2011 and/or addressed in the Findings of Fact and Order (Denial) by the Board, the Board will refer to those previous discussions and Findings.

- B. Request for a public hearing: The petitioners request a public hearing, saying there is credible conflicting evidence regarding this matter and the Board would benefit from a hearing. The permittee urges the Board not to schedule a public hearing because there is no credible conflicting technical information regarding a license criterion, and that it is not likely a public hearing would assist the Board in understanding this matter. Department

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staff also do not recommend a public hearing; it would not help the Board understand the petitioners' basis for their allegations since their reasoning has been provided first in the appeal of the minor revision license and now again in the petition. A public hearing is unlikely to result in new information being provided that would help the Board understand the issues raised in the petition more fully than is possible through review of the materials provided by the petitioners, the permittee and the Department staff.

The Board finds that it is not necessary to schedule a hearing to understand the issues raised in the petition, and that 06-096 CMR 2 §27 provides that the Board either dismiss the petition or schedule a hearing. As explained herein, the Board has voted to dismiss the petition.

- C. Violation of license conditions (06-096 CMR 2 §27.A): Department staff reiterate information provided at the March 3, 2011 Board meeting; the bypassed MSW comes directly to JRL instead of going first to Maine Energy to address concern over out-of-state waste on Maine Energy's tipping floor also coming to JRL, to reduce emissions from trucks hauling MSW down to Biddeford only to then haul the MSW north again to Old Town, and to facilitate Maine Energy's requirement to zero its tipping floor every week. Department staff comment that when PERC has needed to bypass MSW it also has instructed haulers to transport MSW directly to either PTL (when it was open) or JRL, in accordance with the provisions of PERC's bypass agreement with Casella. Further, Department staff communicate on an almost daily basis with JRL personnel and are routinely at the landfill. Between ongoing communication about JRL's operation and review of the monthly summaries that provide the pertinent information about each load of waste that comes into the landfill, Department staff are well aware of activities at JRL. There is no "unallocated" MSW from Maine Energy going into JRL; if either JRL or Maine Energy considered this waste not to be MSW bypass from Maine Energy, they would exclude it from the 310,000 tons per year limit. The petition alleges that there were 4 periods of continuous MSW deliveries between 2008 and 2010 that lasted 7 days or more. The Mains affidavit<sup>8</sup>, the source named for that allegation, does not identify the events by date so Department staff were unable to verify notification was specifically

<sup>8</sup> Exhibit 3 of the petition

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made; however, Department staff note that the permittee's review of the documents Mains references shows 3 of the 4 periods lasted 7 days, which is not more than 1 week. Department staff responsible for monitoring compliance at JRL and reconciliation of the waste volumes reported to the Department in the annual reports deem JRL in compliance with Condition #16 of the amendment license.

The Board finds that this issue was addressed by Department staff during the Board's March 3, 2011 meeting when the Board heard the petitioners' appeal of the same minor revision license. Furthermore, in Finding of Fact #6.G of the Findings of Fact and Order (Denial) on that appeal<sup>9</sup> the Board recognized the reasons for MSW coming directly to JRL from transfer stations.

The Board also finds that Condition #16 of the amendment license requires verifiable authorization of a bypass event; the condition does not specify the form of that authorization, or that it be written (including notification of bypass events lasting longer than 1 week). The Board further finds that during consideration of the petitioners' appeal at the March 3, 2011 Board meeting, a Board member suggested to the petitioners that they discuss their concerns with MSW bypass from Maine Energy with Department staff; Department staff state that the petitioners have made no attempt to do so, nor were the 2 affidavits included with this petition as Exhibits 3 and 4 updated to reflect the information provided at the March 3, 2011 Board meeting and the subsequently issued Board Findings of Fact and Order (Denial), also dated March 3, 2011.

In summary, the Board finds that the permittee and Department staff have adequately explained the tracking and documentation of unprocessed MSW bypass associated with Maine Energy and JRL required by Condition #16 of the amendment license.

- D. Misrepresentation or failure to disclose all relevant facts (06-096 CMR 2 §27.B): As explained in paragraph C, above, staff have detailed day-to-day knowledge of the operation of JRL, and review monthly waste summaries that document each truckload of waste that goes into the landfill. Department staff know the volumes of MSW bypass that go into

<sup>9</sup> The Board's Findings of Fact and Order (Denial) is Attachment A of this order.

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the landfill; as discussed in the March 3, 2011 Board meeting, staff maintain a table documenting the volume of MSW bypass received from the incinerators that is based on the monthly summaries provided by JRL. The "*Juniper Ridge Landfill – Tracking of Some Categories of Waste*" table, updated through the end of 2010, was included on page 231 of the Board materials for the March 3, 2011 meeting. The "*Juniper Ridge Landfill – Tracking of Some Categories of Waste*" table, updated through May, 2011, is provided as Attachment D of this Order. Petitioners do not take into consideration the discussion at the March 3, 2011 meeting about the efforts made at both Maine Energy and JRL to reduce odor impacts to the greatest extent possible. Department staff know MSW bypass from Maine Energy is delivered year round; the issue is that the MSW bypass used in a new cell's soft layer is installed on an as-delivered basis. Although PERC stores MSW delivered during the summer months in excess of what it can process and incinerate, Maine Energy zeros its tipping floor each week, and JRL is not allowed to stockpile putrescible waste to be used in the soft layer. Construction of Cell 6 at JRL was completed in August 2010. Of the 31,400 cubic yards of material calculated to be needed for the Cell 6 soft layer, only 16,324 tons (about 11,500 cubic yards) was available; the remainder of the material used was FEPR and processed railroad ties.

The Board finds that the information submitted to the Department on a monthly, annual and ongoing basis demonstrates that the permittee discloses, and the Department is fully aware of, the deliveries of MSW bypass from the incinerators to JRL.

- E. Pose a threat to human health or the environment (06-096 CMR 2 §27.C): Again, petitioners have not considered the wording in the minor revision license and the explanations provided by Department staff during the March 3, 2011 Board meeting about the use of unprocessed MSW bypass in the soft layer. Finding of Fact #3 clearly states "Staff have requested the applicant use MSW bypass as much as possible for the soft layer in each new cell because it is the waste stream licensed for disposal at JRL that best meets the purpose of the soft layer." Department staff previously responded to this issue when it was raised in the appeal. The following language is found in Finding of Fact #8.H of the Board's March 3, 2011 order dismissing the appeal of the minor revision license.

STATE OF MAINE, ACTING THROUGH THE	14	PETITION TO REVOKE,
STATE PLANNING OFFICE	)	MODIFY OR SUSPEND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE LICENSE
JUNIPER RIDGE LANDFILL	)	
CHANGE IN MSW BYPASS LIMIT	)	
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...“The Board again finds that the minor revision license does not require that the MSW bypass used in the soft layer of Cell 6 and future cells come exclusively from Maine Energy. The Board also again finds that MSW bypass events are governed by contracts between the incinerators and their customers; JRL has been unable to obtain sufficient MSW bypass for the soft layer in Cell 6 since only Maine Energy has provided MSW bypass since the cell was completed. As stated in the minor revision license, the Department recognized that sufficient MSW bypass might not be available for the soft layer; thus, the wastes historically used as soft layer material at JRL would be used to make up the balance of the required soft layer. The Board also finds that some of soft layer may include residuals from PERC, but JRL is no more required to solely use residuals from PERC than it is required to use wastes from Maine Energy.”

As stated in paragraph D, above, of the approximately 31,400 cubic yards of soft layer material calculated to be needed for the soft layer in Cell 6 (the cell constructed in 2010), only approximately 14,500 cubic yards of MSW bypass was delivered to JRL. The Department recognizes, and the minor revision license reflects the recognition, that it is unlikely sufficient MSW bypass would be available to be the sole material used in the soft layer.

Department staff analyzed the St. Peter affidavit, and prepared a review memorandum that details the results of the analysis of the St. Peter affidavit. The Department staff comments are provided in a memorandum from Amanda Wade, P.E. to Cynthia Darling dated July 27, 2011. A complete copy of the memorandum is provided in Attachment C of this Order. In summary, Department staff provide the following comments on the St. Peter affidavit:

- Maine landfills that have successfully placed MSW as the primary soft layer material include the City of Bath, the Town of Brunswick and the City of Lewiston.
- As also addressed in paragraph D, above, the placement of soft layer waste is an operational issue, and is addressed in the operations manual (including the manual for the Presque Isle landfill referenced in the St. Peter affidavit). JRL operators receive training on oversight and placement of incoming waste, including

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STATE PLANNING OFFICE	)	MODIFY OR SUSPEND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE LICENSE
JUNIPER RIDGE LANDFILL	)	
CHANGE IN MSW BYPASS LIMIT	)	
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waste to be used in the soft layer. To require the construction quality assurance suggested in the St. Peter affidavit for placement of the soft layer would be an unwarranted expense for all landfill owners/operators.

- Cells constructed at JRL do not typically require the level of frost protection needed at most Maine landfills because the fill rate is higher (i.e., portions of the new cell do not sit empty for long).
- Department staff carefully review all submittals related to construction and operation of landfills. Staff use knowledge gained from experiences at other, similar facilities when making recommendations on applications as well as ongoing construction and operational issues. That knowledge was used in recommending MSW bypass, subject to its availability, in the soft layer at JRL. Likewise, Department staff recommend FEPR and incinerator ash not be placed directly on the leachate collection system at JRL.

With regard to the ecomaine report, Department staff disagree with St. Peter's reading of the report's conclusion. The report concludes that investigation of the clogging found in the geotextiles in the sump area was caused by the considerable amount of silt and clay contained in the tire chips placed in the sump area. Department staff further comment that the referenced ecomaine report is not germane to the petitioners' proposal to use FEPR in the soft layer at JRL since ecomaine does not dispose of FEPR in its landfill, and JRL cells do not include a geotextile above the sand layer leachate collection system. In addition, the investigation into the clogging issues at the ecomaine landfill is ongoing.

The Board finds that the minor revision license does not require the soft layer used at JRL to be comprised solely of unprocessed MSW; rather the order encourages the use of unprocessed MSW as much as possible. The Board also finds that placement of the soft layer is adequately overseen by JRL, its consultants and Department staff, and that the use of MSW bypass in the soft layer will help protect the liner system of new cells.

- F. Change in condition or circumstance (06-096 CMR 2 §27.F): Department staff comment that the petitioner seeks to use statements made by Paula Clark at the Board's March 3, 2011 consideration of the appeal of the minor revision license to demonstrate that the Department has changed its



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OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE LICENSE
JUNIPER RIDGE LANDFILL	)	
CHANGE IN MSW BYPASS LIMIT	)	
#S-020700-WD-W-M	)	DISMISSAL

position, and that change requires a modification of the minor revision license to “more accurately reflect its factual findings”. The petitioner also raises that information now available<sup>10</sup> indicates that leachate clogging issues are isolated to the sump pump area and are due to the use of geotextiles.

Department staff comment that, as explained throughout this finding of fact, MSW bypass remains the waste recommended for use as the soft layer in new cells at JRL constructed with a liner system. Department staff provided considerable background information at the March 3, 2011 Board meeting on construction and operations at JRL. Included in that was an explanation that typically decisions on the waste(s) to be used in the soft layer are considered during construction of secure landfill cells, and are not specifically included in licenses. Department staff explained during the Board meeting why the minor revision license the petitioners’ seek to modify includes language explaining the recommendation to use MSW bypass in the soft layer rather than the wastes JRL has used in the past. The Department’s position on the use of MSW bypass in the soft layer did not change in any way, and the minor revision license does not need to be modified. Department staff reiterate that it is our professional opinion that, of the wastes JRL is licensed to accept, unprocessed MSW bypass from any of the 4 Maine incinerators is the best material for the soft layer.

Department staff comment that, as stated more thoroughly in paragraph E, above, the ecomaine report included in Exhibit 4 of the petition concludes the clogging in the sump area of a cell was due to soils contained in the tire chips used in the sump area clogging the geotextiles.

The Board finds that there has been no change in condition or circumstance that warrants modification of the minor revision license other than the change made in the Board’s Order dated March 3, 2011 dismissing the petitioners’ appeal of the minor revision license.

BASED on the above Findings of Fact, the Board CONCLUDES that:

<sup>10</sup> This refers to the ecomaine investigation report that is Attachment A of Exhibit 4 of the petition

STATE OF MAINE, ACTING THROUGH THE	17	PETITION TO REVOKE,
STATE PLANNING OFFICE	)	MODIFY OR SUSPEND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE LICENSE
JUNIPER RIDGE LANDFILL	)	
CHANGE IN MSW BYPASS LIMIT	)	
#S-020700-WD-W-M	)	DISMISSAL

1. A petitioner for revocation, modification or suspension of a license must bring forth sufficient and persuasive evidence that, if proven, would result in the Board's finding that one or more of the criteria listed in 38 M.R.S.A. § 341-D(3) is met and that necessitates action by the Board.
2. The petitioners' arguments and offers of evidence are not sufficient to justify an exercise of the Board's discretion to further modify Department license #S-020700-WD-W-M, as previously modified by the Board on March 3, 2011 in response to an appeal by the petitioners of the same license.

THEREFORE, the Board DISMISSES the petition of Penobscot Energy Recovery Company, LP and the Municipal Review Committee, Inc. for modification of Department License #S-020700-WD-W-M, as modified by the Board on March 3, 2011.

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_\_ DAY

OF \_\_\_\_\_, 2011.

BOARD OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Susan M. Lessard, Chair

Date of Initial Receipt of Petition: May 27, 2011